

Editor's note: 80 I.D. 792; Appealed -- aff'd, Civ. No. 74-201 (D. Oreg. July 10, 1974), vacated and remanded, No. 75-3062 (9th Cir. May 3, 1977), modified judgement, (Sept. 9, 1977)

UNITED STATES

v.

MINERAL VENTURES, LTD.

IBLA 73-299

Decided December 12, 1973

Appeal from decision of Administrative Law Judge Dean F. Ratzman (Contest No. OR-09999-E) holding appellant's mining claims subject to section 4 of the Surface Resources Act of July 23, 1955.

Affirmed as modified.

Mining Claims: Surface Uses--Surface Resources
Act: Generally

In a proceeding under section 5 of the Surface Resources Act of July 23, 1955, to determine whether a mining claim is subject to the limitations and restrictions of section 4 of the Act, the issue is whether or not there is now disclosed within the boundaries of each claim valuable minerals of sufficient quantity,

quality, and worth to constitute a discovery, and whether the discovery was made prior to the effective date of the Act.

Mining Claims: Discovery: Generally

To verify whether a discovery of a valuable mineral deposit has been made, a government mineral engineer need not explore or sample beyond those areas which have been exposed by the claimant; he is not required to do the discovery work for the claimant.

Mining Claims: Discovery: Generally--
Mining Claims: Surface Uses--Surface
Resources Act: Generally

Testimony by a government mineral engineer that he examined the mining claims and the workings thereon and sampled the areas recommended by the claimant but found no evidence of a valuable mineral deposit which would have in the past or present justified a person of ordinary prudence in the further expenditure of his time and means in an effort to

develop a valuable mine, is sufficient to establish a prima facie case of absence of a discovery so as to subject a mining claim to the limitations imposed by section 4 of the Act of July 23, 1955.

Mining Claims: Discovery: Generally

Under the mining laws one discovery anywhere on a claim is sufficient to constitute a discovery as to the whole claim.

Mining Claims: Discovery--Surface Resources Act: Hearings

A hearing under section 5 of the Surface Resources Act of July 23, 1955, directed only to a portion of a claim is insufficient to establish an absence of a discovery as to the whole claim as the locator may still have a valuable mineral deposit on that portion of the claim not challenged by the Government.

Mining Claims: Surface Uses--Surface Resources
Act: Verified Statement

Where a verified statement filed pursuant to the Surface Resources Act of July 23, 1955, fails to set forth, as required by section 5(a)(3) of the Act, all of the sections of public land which are embraced within each of the claimant's mining claims, the statement is defective as to an inadequately described claim and said claim is subject to the limitations and restrictions of the Act.

APPEARANCES: William B. Murray, Esq., Portland, Oregon, for appellant; Albert R. Wall, Esq., Office of the General Counsel, United States Department of Agriculture, for appellee.

OPINION BY MR. RITVO

Mineral Ventures, Ltd., has appealed from an adverse decision of an Administrative Law Judge dated February 8, 1973. The Judge declared appellant's placer gold mining claims subject to the limitations and restrictions of section 4 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 612 (1970).

At the request of the Forest Service, United States Department of Agriculture, a proceeding pursuant to section 5 of the above Act was initiated. The purpose of the proceeding was to determine the right of the United States to control and use the surface resources on three placer mining claims so long as the claims remained unpatented.

A hearing was held in Portland, Oregon, on October 24, 1972, to determine whether a discovery of a valuable mineral deposit had been made within the limits of any of the claims. The three claims in issue are the Enterprise, Swamp, and Extension of Swamp, located in sec. 13, T. 41 S., R. 7 W., Willamette Meridian, Althouse Mining District, Josephine County, Oregon. A portion of the Enterprise claim extends approximately 1,000 feet across the Oregon border into California. All the proceedings preliminary to the hearing were directed solely to the Oregon portion of the Enterprise. The problems arising from this restriction are discussed below.

During the hearing the Government's sole witness, Clover F. Anderson, a Forest Service mining engineer, testified that he had taken samples from the subject claims and that the gold content in the samples was very low. (Tr. 23, 24.) He further testified that the cost of exploiting the gold from these claims would make a

mining operation unprofitable. (Tr. 25, 49, 50.) In his view, a valuable mineral deposit had not been discovered on the claims prior to July 23, 1955, and a discovery did not presently exist, even given today's gold prices. (Tr. 26, 50.)

The mining claimant presented almost no probative evidence regarding a discovery on the Swamp or Extension of Swamp claims. It did actively assert that a discovery presently existed, and did exist prior to July 23, 1955, on the Enterprise claim. Its witnesses testified that gold, in a sufficient quantity, was present on the claims justifying further expenditure of time and moneys for development of the properties with a reasonable prospect of success. (Tr. 92, 98, 116.)

The Administrative Law Judge reached the conclusion that no discovery of a valuable mineral deposit within the limits of any of the claims in issue had been demonstrated. Consequently, he declared the three claims subject to the restrictions and limitations contained in section 4 of the Act of July 23, 1955, supra.

On appeal, the appellant presses three primary arguments:

1. Mr. Anderson, sole witness for the Government, anchored his opinion as to lack of discovery upon the erroneous assumption that the Claimant must prove that the mine was profitable on July 23, 1955.

2. One discovery on a claim is sufficient. Thus evidence of lack of discovery on a portion of the claim is insufficient to establish a prima facie case as to that claim. The Enterprise is part in Oregon and part in California.

3. The Government alleged, but offered no evidence to prove, that the Office of Hearings and Appeals had jurisdiction to try this case under the Surface Resources Act, 30 U.S.C. § 613.

Appellant first argues that the Government's witness based his opinion regarding lack of a discovery on an erroneous profitability test: i.e., that the claimant must prove that the mine was, in fact, profitable. Appellant points out that proof of lack of a discovery cannot be based solely upon a showing that a mine was or is not, in fact, operated profitably. He cites Converse v. Udall, 399 F.2d 616, 622 (9th Cir. 1968), cert. den., 393 U.S. 1025 (1969), wherein the Court stated:

* * * But this does not mean that the locator must prove that he will in fact develop a profitable mine.

Having reviewed the complete record, we cannot agree with appellant's contention that Anderson relied exclusively on a past and present profitability test in determining whether a discovery existed. Anderson's references to profitability were simply comments respecting the potential economic viability of the claims. The witness's total evaluation of the quantity of gold on

the claims and the cost of removing and processing the material indicated that a mining venture would not be profitable. He found no exposure of a mineral deposit on any of the claims which would have, in the past or present, justified a person of ordinary prudence in the further expenditure of his time and means in an effort to develop a valuable mine.

It was proper for Anderson to consider the economics of the situation when making his evaluation regarding discovery on the claims. In Chrisman v. Miller, 197 U.S. 313, 322 (1905), the Supreme Court stated that in order to satisfy the prudent man test of Castle v. Womble, 19 L.D. 455, 457 (1894):

"* * * The mere indication or presence of gold or silver is not sufficient to establish the existence of a lode. The mineral must exist in such quantities as to justify expenditure of money for the development of the mine and the extraction of the mineral." * * *

A similar test is presented in the lines immediately preceding appellant's quotation from Converse, supra, p. 622:

* * * But the marketability test does permit the fact finder, even in the case of a showing of gold, to consider, somewhat more extensively than heretofore, the economics of the situation. Perhaps we could phrase the test this way: When the claimed discovery is of a lode or vein bearing one or more of the metals listed in 30 U.S.C. § 23, the fact finder, in applying the prudent man test, may consider evidence as to the cost of extraction and transportation as bearing on whether a person of ordinary prudence would be justified in the further expenditure

of his labor and means. But this does not mean that the locator must prove that he will in fact develop a profitable mine.

Given the above tests in Chrisman and Converse, *supra*, Anderson's analysis of profitability and other economic criteria was a correct basis for a determination of lack of discovery. The Judge properly relied on this testimony in his decision on the issue of discovery. In any event, the crucial point is not what the witness' concept of "discovery" was, but whether the Judge understood and employed, the proper standard. It is clear that he did not require appellant to prove profitability in fact but only adduce sufficient evidence to demonstrate that a profitable venture might reasonably be expected to result. This is the proper test. United States v. Harper, 8 IBLA 357, 365-367 (1972).

We have reviewed the record and we find ourselves in agreement with the Judge's determination of lack of discovery with respect to the Swamp and Extension of Swamp claims. For the reasons set out below, we do not consider the Enterprise claim along with the above two claims.

As to the Enterprise claim, we move on to appellant's second argument that the evidence of lack of discovery on a portion of the claim is insufficient to establish a prima facie case as to the whole claim.

In a case of this nature, the Government has by practice assumed the burden of establishing a prima facie case that there has not been a discovery of a valuable mineral deposit within the mining claim. Foster v. Seaton, 271 F.2d 836, 838 (D.C. Cir. 1959); United States v. Alarco, 9 IBLA 1, 3 (1973).

Anderson testified that he examined both the California and Oregon sections of the Enterprise claim. He noted that the southern portion of the claim extending into California had been thoroughly mined. (Tr. 25.) He took samples from areas within Oregon recommended by the appellant. (Tr. 45, 50.) He was not directed to any area in the California portion.

It is well established that a government mineral examiner need not explore or sample beyond those areas which have been exposed by the claimant. The examiner is simply verifying whether a discovery has been made; he is not required to perform the discovery work for the claimant. United States v. Wells, 11 IBLA 253, 263 (1973); United States v. Kelty, 11 IBLA 38, 42 (1973); United States v. Grigg, 8 IBLA 331, 343, 79 I.D. 682 (1972). Anderson was not required to take samples from the unexposed areas on the California portion of the claim.

Anderson's testimony that he examined the mining claim and workings thereon and sampled the areas recommended by appellant but found no evidence of a valuable mineral deposit was sufficient to establish a prima facie case by the Government that there had not been a discovery as to the whole claim. United States v. Jones, 2 IBLA 140, 148 (1971). Thereupon, the contestee was required to prove by a preponderance of the evidence that a discovery did exist on the claim. United States v. Nichol, 9 IBLA 117, 122 (1973). The appellant failed to meet its burden of proving a discovery existed on the Enterprise claim. A mining claim is properly declared invalid where the Government establishes a prima facie case of lack of discovery and the claimant does not show by a preponderance of evidence that the claim is valid. United States v. Taylor, 11 IBLA 119, 123 (1973); United States v. Mellos, 10 IBLA 261, 267 (1973); United States v. Dotson, 10 IBLA 146, 147 (1973).

There is, however, another aspect to appellant's contention that goes beyond the issue of discovery. Although appellant couches its argument in terms of an inadequate prima facie case, the real issue is the sufficiency of the proceedings leading to the hearing. The thrust of appellant's contention is that the preliminary proceedings were deficient as to the Enterprise claim, leaving the Department without jurisdiction to hold a hearing covering it.

As noted above, the Enterprise claim lies in both Oregon and California. The notice of publication and appellant's verified statement, both required by § 5 of the Act, 1/ only described land situated within Oregon.

1/ Section 5 of the Act reads in pertinent part:

"(a) The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the Office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. . . .

* * * * *

Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim --

- (1) the date of location;
- (2) the book and page of recordation of the notice or certificate of location;
- (3) the section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;
- (4) whether such claimant is a locator or purchaser under such location; and
- (5) the name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim;

Section 5 requires a mining claimant to set forth all of the sections of public land in which his claim lies. This the appellant admittedly failed to do. Its neglect has led directly to the difficulty in which we find ourselves. If the verified statement had been known to be defective when it was filed and had not been corrected within the 150-day period, it would have been rejected and then there would have been no further proceedings. 2/

The statement as filed is not defective on its face, since a claim could exist limited to the sections it described. But at the hearing the mining claimant stated and still insists that its

(fn. 1 Cont.)

such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title, or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this Act as to hereafter located unpatented mining claims."

2/ While a verified statement may be corrected after the 150 days have elapsed, it may not be amended to assert rights in lands other than those identified prior to the expiration of that period. Weeds Point Mining Company, A-30799 (November 2, 1962); see Ted R. Wagner, 69 I.D. 186 (1962).

claim covers other lands. It also asserts that the procedure as to the Enterprise is invalid. Yet the reason the procedure is invalid, if so it be, is because Mineral Ventures, Ltd. (or its predecessors) filed a defective verified statement.

To decide the effect of a section 5 proceeding involving only a part of a mining claim, we turn first to an examination of the statute.

The steps leading up to a hearing under section 5 begin with a decision by the head of a federal department or agency who has responsibility for administering surface resources of lands belonging to the United States that he believes that a determination is desirable to ascertain who controls the surface rights to certain of such lands. The lands are then examined to discover whether anyone is in actual possession or engaged in working them. The agency head must also have a search made of "tract indexes" in the proper county office of record, if such there be. The agency or department head then files a request with the Secretary of the Interior for publication of a notice for determination of surface rights describing the section or sections of public lands embracing the lands covered by the request.

The Secretary of the Interior then directs publication of the notice describing the lands covered by the request. The notice is directed to any person claiming or asserting rights to such lands by virtue of an unpatented mining claim. So far the proceedings are directed solely to the lands covered by the request.

In response to the notice a mining claimant desiring to assert rights to the surface resources in any of such lands must file a verified statement. The verified statement must set forth certain information as to the unpatented mining claim. For our purpose, one item is particularly important. He must set forth "the section or sections of the public land surveys which embrace such mining claims." Sec. 5(a)(3), 30 U.S.C. § 613 (1970).

In other words, a mining claimant must describe all of the sections of public land in which his claim lies.

Here for the first time lands not covered by the "determination" request are brought into the proceedings.

Up to this point the on-the-ground and record examinations have been directed to the land with which the administering agency is concerned. In the verified statement the mining claimant has an

opportunity and is required to identify his mining claim and all the sections of public land it covers. The statute then speaks in terms of a "mining claim."

As the Administrative Law Judge pointed out, the verified statement filed on September 21, 1960, by the then owners of the Enterprise 3/, stated that the three mining claims, including the Enterprise, were located in Sec. 13, T. 41 S., R. 7 W., Willamette Meridian, Oregon. It made no reference to land in California.

In August of 1970, appellant submitted to the Forest Service a copy of an unrecorded quitclaim deed describing and conveying only lands in Oregon. Although the deed does not name any mining claims, the description covers the portion of the Enterprise claim in Oregon. There is no indication in the record whether another deed conveyed the California portion of the Enterprise.

At the opening of the hearing appellant's attorney asserted that the Enterprise extended into California (Tr. 8), but offered nothing to show how appellant had acquired title to the California

3/ These owners were the heirs of one Harry Lee Akerill. The appellant is a corporation whose president is a grandson of Akerill and whose stockholders, for the most part, are members of the family. The corporation is the successor in interest to the mining claimants who filed the verified statement. (Tr. 56.)

portion. Appellant calls attention to a letter dated March 11, 1966, from its attorney to Clover F. Anderson, the Forest Service mineral examiner who testified at the hearing, which states that the claims were partly in California and partly in Oregon. However, in its answer to the complaint, appellant stated that the Enterprise, and the two other claims were situated in sec. 13, T. 41 S., R. 7 W., W.M., Joseph [sic] County, Oregon. No mention was made of California.

The difficulties surfaced at the beginning of the hearing. When appellant offered Exhibit M, the Government objected on the ground that it referred to California. (Tr. 8.) The following colloquy then occurred:

MR. WALL: B, C, E, F, G, H, I, and N, but M is from California and not before the Court today, the California property.

MR. MURRAY: We don't understand that this is the situation, that we are going to divide the claims in two. The California line goes right through the claims and according to the notice we understood the entire claim would be tried, whether they are in California or Oregon. So, this certainly will make a confusing situation if we have two hearings. Of course, we would abide by whatever you desire and just limit our testimony to grounds that are in the State of Oregon and ask that those parts of the claims based on counsel statement, which are not in issue in California be dismissed and the proceedings be dismissed as to those parts of the claims in California, based upon the statement made by the Government.

THE COURT: `Course I received very little information in the transmittal that comes from the Bureau of Land Management and at present there is no map or graph of the claim in the file transmitted to the hearings division. I note that the transmittal of proceedings for hearings refers to No. -09999 -E and land involved being in the County of Josephine, Oregon and the notices which have been issued state Enterprise Placer, Swamp, Extension of Swamp Mining Claim located in Section 13, Josephine County, Oregon.

Mr. Murray, you are indicating that one or more of those claims runs from Josephine County down into California?

MR. MURRAY: The Enterprise Claim is partially in Oregon, partially in California.

I didn't realize that the notice had specifically specified Oregon, I think probably counsel is right that the only issue that can be tried now are the lands in Oregon and therefore we would have to exclude in this hearing the part of the Enterprise Claim which extends into California.

THE COURT: Well, I would say that the Government would have the right to take that position. I'm not sure that that's a fortunate thing with respect to the proposition that has been discussed, mainly the question of two hearings with perhaps duplicated testimony but ----

* * * * *

THE COURT: * * * I'm going to examine the transmittal from--I note that the transmittal letter from the United States Forest Service to Bureau of Land Management, dated September 11, 1970, also restricts the request for a hearing to the claims within the State of Oregon and once more I would like to indicate that until I came to this hearing today, I had no idea that the claims extended down into California. I don't believe there is anything in the file which has been furnished to me which would have cast some light on this matter.

MR. WALL: The verified statement is addressed to the Oregon property only.

THE COURT: Well, Mr. Wall, you regard it as a practical and economical matter to break this up and have two hearings if that's what the agency desires?

MR. WALL: Well, the verified statements filed with the Court are only for the Oregon property.

THE COURT: Oh, I see.

MR. WALL: The claimant was responsible for that.

THE COURT: Off the record.

(OFF THE RECORD)

THE COURT: I will allow the parties to preserve their respective positions concerning the status of the portion of the claim which is in California taking into account the statement which Mr. Wall has just made, mainly that the verified statement in this matter also seems to cover only claims said to be situated in the County of Josephine, State of Oregon.

(TR. 8, 9, 10 and 11).

We cannot determine from the transcript or the Judge's decision whether either party offered all the evidence it wanted to concerning the California land. There is some testimony commenting on its having been extensively mined, but such evidence was apparently incidental. The Judge commented that the Government probably could not attack a claim piecemeal but found the Government had acted in a reasonable and proper fashion. He then found the whole of the Enterprise lacking in a discovery.

The Judge did not restrict his findings to the Oregon portion of the Enterprise. Indeed, if he had, his finding would have been ineffectual. While section 5 of the Act does not explicitly state that the whole claim must be challenged at the hearing, this requirement is a natural outgrowth of the test utilized in determining whether a mining area is subject to the limitations and restrictions of section 4 of the Act, viz., whether a discovery of a valuable mineral deposit has been made within the limits of the claim.

Under the mining laws one discovery anywhere on a claim is sufficient to constitute a discovery as to the whole claim. United States v. McCall, 7 IBLA 21, 26 (1972); Ferrell v. Hoge, 29 L.D. 12, 15 (1899). The pertinent regulation 43 CFR 3842.1-1 reads:

But one discovery of a mineral is required to support a placer location, whether it be of 20 acres by an individual or 160 acres or less by an association of persons.

Inasmuch as one discovery anywhere on a claim is sufficient to constitute a discovery under the mining laws, a hearing directed to a portion of a claim is insufficient to establish an absence of a discovery as to the whole claim. This follows from the fact that the locator may still have a valuable mineral deposit on that portion of the claim that was not challenged by the Government.

The Board does not mean to suggest that the Government, being required to challenge the whole claim, must then assume control over the total area should it prevail in its challenge. The Government may choose to exercise control over whatever portion it deems necessary in the public interest. What is required is that the claim as a whole must be involved in the hearing and be found to be lacking in a discovery before the Government can assume control over any part of the claim.

Although the Government may have failed to properly challenge the entire Enterprise claim at the hearing, we are of the opinion that the appellant's predecessors initiated the problem by submitting an incomplete description of the Enterprise claim in their verified statements, and the appellant compounded it by its own actions, i.e., its deed and its answer. The record now before us establishes that the verified statement was defective and should have been rejected, if all the facts had been known. We now have the pertinent facts. Accordingly, we find the verified statement defective as to the Enterprise claim and reject it. Therefore, we find that, as to this claim, Mineral Ventures Ltd. has waived its rights as provided in sec. 5. See n. 1. The Judge's decision is modified to make this the basis for finding that the Enterprise claim is subject to the limitations of sec. 4.

The principal effect of such waiver is the limitation prior to patent as to management and disposition of vegetative surface resources. Appellant may proceed to develop its claim, and it remains entitled to all subsurface rights it had prior to the proceedings. It is also entitled to those surface resources reasonably necessary for conducting its mining operations. United States v. Trussel, 7 IBLA 225, 228 (1972); Arthur L. Rankin, 73 I.D. 305, 311 (1966). ^{4/} Should patent subsequently issue to appellant for the claims in issue, the reservations, limitations and restrictions imposed by the Act in favor of the United States would cease to exist. 30 U.S.C. § 615 (1970).

Appellant's third argument deals with defects of a technical nature relating to Government Exhibit 13, "Affidavit of Examination," Exhibit 14, "Notice of Publication," and Exhibit 15, "Certificate of Non-Existence of Tract Indexes." It argues that Government errors with respect to these items caused the Office of Hearings and Appeals to lose jurisdiction to adjudicate all of the claims under the Surface Resources Act, 30 U.S.C. § 613 (1970). The Judge denied appellant's request for dismissal of the proceeding based upon these jurisdictional grounds.

^{4/} These constraints are equally applicable to the Swamp and Extension of Swamp claims. The Administrative Law Judge did not hold these claims void. He merely held the limitations of section 4 of the Act applied. Appellant still has the claims, can work them, and can apply for a patent.

With respect to Exhibit 15, appellant argues that sec. 613 of the Act requires that a certificate of title be supplied by the Government. Appellant argues that tender of a certificate of nonexistence of tract indexes does not meet the requirements of the section. In the District Court opinion in Converse v. Udall, 262 F. Supp. 583, 592 (D.C. Or. 1966), aff'd, 399 F.2d 616 (9th Cir. 1968), cert. den. 393 U.S. 1025 (1969), the Court disposed of an identical argument and stated:

No request for publication was accompanied by the required certificate of title or abstract of title. Here the plaintiffs are technically correct, as the defendant could not comply with the literal wording of the statute due to the fact that there were no tract indexes of the land in question maintained in the records of Linn and Crook Counties. Because of this fact, defendant instead submitted certificates of the nonexistence of the tract indexes. Obviously, compliance was impossible and the point does not go to the merits.

We have already considered the consequences of the fact that Exhibit 14, the notice of publication, did not describe all the land in the Enterprise claim. As noted above, such description is not required.

The notice of publication and the affidavit of examination are required by 30 U.S.C. § 613 (1970), in order to assure that the proper parties are given notice of the Government's action. Appellant

was completely informed of the proceeding against its claims. There is no indication that the appellant was in any way prejudiced by any of the alleged deficiencies in these two exhibits. The Judge stated in his decision, p. 2:

There is no indication that any deficiencies which may exist in these areas have been prejudicial to the interests of Mineral Ventures, Ltd. (the only mining claimant in this proceeding), or have affected that corporation's opportunity to be represented and heard in this matter. In fact, a hearing originally scheduled for January, 1972, was canceled after requests of the mining claimant's attorney, who advised that he required a longer period for preparation. He requested a hearing for September, 1972. The hearing was held on October 24, 1972.

In the past, this Board has held that technical deficiencies will not defeat the Government's case where there is no showing that the claimant was in any way misled, confused or prejudiced by the errors. Mrs. Mildred Carnahan, 10 IBLA 150, 156 (1973), United States v. Stewart, 1 IBLA 161, 165 (1970); see also the D.C. opinion, Converse v. Udall, *supra*, p. 592. After reviewing the record, we find that the deficiencies, if any there were, in no way prejudiced the appellant. Accordingly, the Board finds itself in full agreement with the Judge's ruling on this matter.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as modified.

Martin Ritvo, Member

We concur:

Joan B. Thompson, Member

Frederick Fishman, Member

